IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LAWRENCE A. OTT,   )
)
              Plaintiff,   )
)
         vs.   )   Civil Action No. 10-191-J
)
MICHAEL J. ASTRUE,   )
COMMISSIONER OF SOCIAL SECURITY,   )
)
              Defendant.   )

                          O R D E R

         AND NOW, this 29th day of February, 2012, upon consideration

of the parties' cross-motions for summary judgment, the Court, upon

review of the Commissioner of Social Security's final decision, denying

plaintiff's claim for disability insurance benefits under Subchapter

II of the Social Security Act, 42 U.S.C. §401, et seq., and denying

plaintiff's claim for supplemental security income benefits under

Subchapter XVI of the Social Security Act, 42 U.S.C. §1381, et seq.,

finds that the Commissioner's findings are supported by substantial

evidence and, accordingly, affirms. See 42 U.S.C. §405(g); Jesurum

v. Secretary of U.S. Department of Health & Human Services, 48 F.3d

114, 117 (3d Cir. 1995); Williams v. Sullivan, 970 F.2d 1178, 1182

(3d Cir. 1992), cert. denied sub nom., 507 U.S. 924 (1993); Brown v.

Bowen, 845 F.2d 1211, 1213 (3d Cir. 1988). See also Berry v. Sullivan,

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738 F. Supp. 942, 944 (W.D. Pa. 1990) (if supported by substantial

evidence, the Commissioner's decision must be affirmed, as a federal

court may neither reweigh the evidence, nor reverse, merely because

it would have decided the claim differently) (citing Cotter v. Harris,

642 F.2d 700, 705 (3d Cir. 1981)).[1]

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[1]

    Although not raised by the parties, the Court notes that the
Administrative Law Judge ("ALJ") did not make express findings
regarding Plaintiff's ability to stoop. He appears to have adopted
the findings of consultative examiner Stanley Kotala, M.D., that
Plaintiff is not able to bend or crouch. Dr. Kotala, however, also
found that Plaintiff could never stoop. The ALJ neither adopted this
limitation nor explained why he did not. Pursuant to Social Security
Ruling (SSR) 96-9p, the frequency with which Plaintiff can stoop could
have impacted the amount of erosion of the relevant occupational base,
which included a limitation to sedentary work. Specifically, SSR
96-9p provides that "[a]n ability to stoop occasionally; i.e., from
very little up to one-third of the time, is required in most unskilled
sedentary occupations." It further provides that "[a] *complete*
inability to stoop would significantly erode the unskilled sedentary
occupational base and a finding that the individual is disabled would
usually apply." SSR 96-9p, 1996 WL 374185 (S.S.A.), at *8 (emphasis
in original).

    However, although he did not expressly discuss Plaintiff's
ability or inability to stoop, the ALJ did find that Plaintiff was
not able to bend. Stooping is a form of bending, i.e., bending the
body downward and forward by bending the spine at the waist, so the
inability to bend would also preclude stooping. See SSR 85-15, 1985
WL 56857 (S.S.A.), at *6; Chester v. Callahan, 193 F.3d 10, 13 n.1
(1st Cir. 1999) ("The ability to stoop incorporates the ability to
bend."); Harrington v. Astrue, 2008 WL 819035, at *4 (M.D.N.C. Mar.
21, 2008). Therefore, the ALJ's finding that Plaintiff could not bend
necessarily included the finding that he could not stoop. Moreover,
the vocational expert ("VE")'s testimony that the inability to bend
did not erode the ability to perform the jobs of plastic design applier
and ink printer, therefore, would also necessarily indicate that the
inability to stoop would likewise cause no such erosion, since the
hypothetical person considered by the VE who could not bend also could

Therefore, IT IS HEREBY ORDERED that plaintiff's Motion for Summary Judgment (document No. 18) is DENIED and defendant's Motion for Summary Judgment (document No. 20) is GRANTED.

                                        s/Alan N. Bloch
                                        United States District Judge

ecf: Counsel of record

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not stoop. In other words, stooping is merely a part of the broader category of bending, so if an inability to bend did not erode the occupational base, an inability to stoop would not either. Accordingly, the failure of the ALJ to expressly discuss stooping does not require a remand. See Harrington, 2008 WL 819035, at *4.